

formal defect which can be cured by the Court either under section 123 of the Enactment or under Rule 285. The Appellant therefore succeeds on this ground.

I can deal briefly with the Appellant's second ground of appeal. It is difficult to see how the notice could have been framed more in accordance with the terms of the judgment and at the same time notify the Debtor as to the exact amount claimed. The total amount claimed is set out in the body of the notice and in the margin details are given showing how this total is made up. These details are \$2,971.81 which was the specific amount awarded in the judgment, then \$437.62 in respect of taxed costs which were also awarded to the Plaintiff but which had of course to be taxed subsequently to the judgment, and then \$12.38 in respect of interest which was also awarded in the judgment at a rate of 5 per cent "to the date of realisation of the said sum". Neither the judgment—Creditor, nor anyone else could give the exact date of such realization in anticipation of the Judgment—Creditor computed interest at such rate up to the last completed month prior to the date of issue of the notice.

I do not think that *In re H.B.* (1904) 1 K.B. 94 can be urged as an authority for the Respondent as the facts in that case were so entirely different to those in the case before us. In fact Vaughan Williams L.J. added a statement to his judgment that a Bankruptcy Notice issued for a smaller sum than the judgment by reason of credit being given for amounts already paid is a notice to pay in accordance with the terms of the judgment.

It is obvious, in my opinion, that in computing the amount of interest due on the judgment the judgment—creditor has waived the few dollars payable in respect of the 14 days prior to the date of the issue of the notice. In any case, he could not give the debtor credit for the specific amount of interest which was or would become payable until realization.

For these reasons I am of the opinion that on this ground the notice was in accordance with the terms of the judgment, but that on the first ground the Appellant succeeds with costs both in this Court and the Court below.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

November 23, 1938.

PUBLIC PROSECUTOR v. CHEAN TIN

(PAHANG MAGISTRATE'S CRIMINAL

APPEAL No. 5 of 1938)

Criminal Procedure—Summary Trial—Procedure upon plea of guilty being made.

It is the duty of Magistrates, where an accused has pleaded guilty, to record some evidence upon which the sentence may be based and upon which, on appeal, the adequacy or otherwise of such sentence can be reviewed.

MAGISTRATE'S CRIMINAL APPEAL.

Draper, Deputy Public Prosecutor, for Public Prosecutor, Appellant.

Respondent in person.

Terrell, Ag. C. J.—The accused was charged with two offences, the first under S.13(i) of Cap. 133—(Excise Enactment), and the other under S.62(a) of the same Enactment. He pleaded guilty to both charges, and was fined \$5 or one day's R. I. on the first charge, and 60 or 14 days R. I. on the second charge. The Public Prosecutor has appealed against the inadequacy of the sentences.

I would remark that it is the duty of Magistrates, even where the accused has pleaded guilty, to record some evidence upon which the sentences are based, and upon which, on appeal, the adequacy or otherwise of such sentences can be reviewed. In this case the learned Magistrate made no record at all, and it was accordingly necessary for the Supreme Court to call evidence under S.317(i) of the Criminal Procedure Code. It now appears that the accused had previously been convicted and sentenced for a similar offence, the previous conviction being admitted by the accused.

In the circumstances it appears to the Court that the sentence on the first charge was inadequate, and the appeal was allowed and the sentence altered to one of two months R.I., such sentence to run from the date of conviction, namely the 13th of October 1938. The Deputy Public Prosecutor did not proceed with the appeal against the sentence on the 2nd charge, and this sentence was accordingly confirmed.

Sentence Enhanced.